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WOOD et al. v. ARONBERG.

Jan. 19, 1922.

[110 S. E. 351.]

1. Brokers (§ 37*)—Payment to Broker Recoverable When Conditions on Which Made Not Accepted, but Person Making Cannot Take Chance of Profit on Account on Which Made.—Where plaintiff, claiming to be the real purchaser of stock purchased in the name of a third person, sent his check to broker to cover margins, and asked that the stock be transferred to his account, he had a right to demand and recover the amount paid on the broker's refusal to make such transfer, but he had no right, after learning of such refusal, to keep silent and withhold his claim until the broker had closed the third person's account, thus reserving his freedom to determine whether he would demand the return of the amount of the check or claim the profit on the stock without assuming any responsibility for losses.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 643.]

2. Trial (§ 343*)—Verdict Not Allowing Set-Off Construed as Determining Contention on Which Based against Defendants.—In an action against stockbrokers for an alleged profit on stock purchased in the name of a third person, in which defendants filed a plea of set-off alleging that plaintiff and the third person were partners and seeking to recover a balance due on the third person's account, a verdict failing to allow such claim must be construed as determining this contention against the brokers.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 620.]

3. Brokers (§ 37*)—In Action on Account of Purchase in Stock in Third Person's Name, Verdict for Defendant Improperly Set Aside.—In an action against stockholders for an alleged profit on stock purchased in the name of a third person, where the evidence was conflicting, but that for defendant tended to show that the third person bought stock in his own name, paid the margins with his own money, and undertook, while largely indebted to the brokers on account of other purchases, to transfer the stock to plaintiff without responding to proper demands for margins, and that when the broker refused to make the transfer he and plaintiff raised no further question until after a sale of the stock by the brokers with the third person's assent, a verdict for defendants, on the theory that plaintiff was speculating in the third person's name as undisclosed principal, with intent to take the profit without assuming responsibility for losses, was not plainly wrong, and it was error to set it aside.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 583.]

Error to Circuit Court of City of Norfolk.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Action by D. G. Aronberg against J. Leon Wood and another, partners doing business as J. Leon Wood & Co. Judgment for plaintiff after a verdict for defendants had been set aside, and defendants bring error. Reversed, and judgment entered on the verdict.

E. A. Bilisoly, of Norfolk, *Geo. S. Martin* and *R. W. Shultice*, of Norfolk, for plaintiffs in error.

Williams, Loyall & Tunstall, of Norfolk, for defendant in error.

POLLARD *v.* COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 354.]

1. Indictment and Information (§ 125 (1)*)—Prohibition Act, Permitting a Number of Violations to Be Charged in One Count, Valid.—Prohibition Act, § 7, permitting a number of violations of such act to be charged in a single count in the manner thereby prescribed, is valid.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 441.]

2. Intoxicating Liquors (§§ 13, 132*)—Part of State Prohibition Act against Importation Not Nullified by Eighteenth Amendment or Volstead Act.—Prohibition Act, § 39, forbidding the importation of ardent spirits into the state from a point without, is not nullified by Const. U. S. Amend. 18, or the Volstead Act; the provision of the Webb-Kenyon Act (U. S. Comp. St. § 8739), which under the commerce clause empowered such inhibition by the state, being left in force by the Volstead Act, and section 35 repealing acts only so far as inconsistent therewith.

Error to Corporation Court of Norfolk.

James E. Pollard was convicted of a violation of the Prohibition Act, and he brings error. Affirmed.

N. T. Green, of Norfolk, for plaintiff in error.

Jno. R. Saunders, *Atty. Gen.*, *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, and *Leon M. Bazile*, *Second Asst. Atty. Gen.*, for the Commonwealth.

DAVIS *v.* COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 356.]

1. Burglary (§ 9 (1)*)—“Actual Breaking” and “Constructive Breaking” Defined.—Breaking, as an element of the crime of burglary,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.